

In The United States District Court
For The District of Delaware

William Joseph Webb Jr.,
Plaintiff,

v.

First Correctional Medical,
Et. Al.,
Defendants.

Civ. Act. No. : 07-31-GMS

Jury Trial Requested

Memorandum of Law in Support of Plaintiff's Motion for Compulsory
Physical Examination and Mental Health Evaluation.

Comes now, Plaintiff, presenting his Memorandum of Law, with
the following:

- i. Rule 35. Physical and Mental Examinations of Persons
(a) Order for Examination states: "When the mental or physical
condition (including the blood group) of a party or of a person in the
custody or under the legal control of a party, is in controversy,

the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or Certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made."

2. "Good Cause" is not a formality, but a legally sufficient reason which is often the burden placed on a litigant; the court must genuinely balance the need for the information with the right to privacy and safety of the party. (See *Schlagenhauf v. Holder*, 379 U.S. 104, 118, 85 S.Ct. 234, 242, 13 L.Ed.2d 152 (1964)); (Also see *Simpson v. University of Colorado* 220 F.R.D. 354, 362 (D. Colo. 2004) (the rule is to be construed liberally in favor of granting the examination).

3. "CMS" is a defendant who would be at peril to admit that they are in fact doing anything wrong, so this would present a "Conflict of interest" for them to present any type of examinations

for the Court to deem that the Plaintiff is receiving constitutionally adequate medical care, along with the fact, the Court is not a qualified medical expert which it is now attempting to consider a preliminary injunction order without the mediating factor of a conflict-free medical examination of Plaintiff.

4. Plaintiff's health and safety are in controversy.

5. Defendant "Taylor's" attorney has addressed everything but the truth of the matter.

6. The grievance procedures here at D.C.C. are inadequate to receive the examinations being requested and which were requested on the grievances which remain unresolved for almost 5 months now.

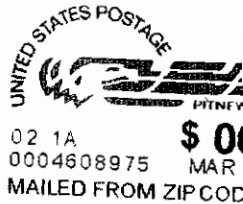
7. The Motion has been made in good cause and good faith.

Therefore, upon the Motion, Affidavit, and Memorandum of Law, the Court should grant the Plaintiff's Motion for Compulsory Transfer for Physical and Mental Examinations.

Dated: March 19, 2008

Respectfully Submitted,
Will Joseph Will Jr
 # 250505C/17 SHU C122
 1181 Paddock Road
 Smyrna, DE 19577

SMYRNA, DELAWARE 19977



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U.S.M.S.
X-RAY

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Affidavit

I, William Joseph Webb Jr., being first duly sworn and deposed state the following:

1. My health and safety are at controversy which led me to file for a Physical Examination and Mental Health Evaluation in good case and good faith.

2. "CMS" has a conflict of interest to present any type of medical examination to the Court for consideration where "CMS" is not only a defendant, but has continuously deprived Plaintiff of medical care that is of normal standards in society.

3. "CMS" has known Plaintiff has Hepatitis C since 2005 when it took over as medical provider at D.C.C., yet no type or form of treatment plan has been discussed or put into action which is a clear case of deliberate indifference.

4. Plaintiff has noticed a clerical error on the Complaint as to the date of April 19, 2005 which should state April 19, 2006.

Sworn before me on this 12th day of March, 2008,

Brian D. Engren
Public Notary

Brian D. Engren

Notary Public, State of Delaware

My Commission Expires June 14, 2008

Brian D. Engren

Notary Public, State of Delaware

My Commission Expires June 14, 2008

William Joseph Webb Jr.
Affiant

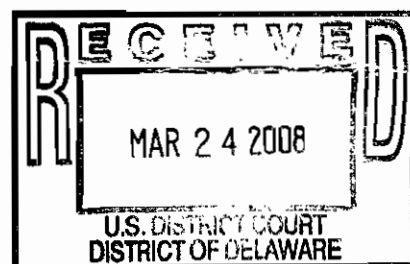
Ex. A

To: Clerk of the U.S. Dist. Ct. for Delaware

Fr: William Joseph Webb Jr.
#00256252 / 17 SHU C12L
1181 Paddock Road
Smyrna, DE 19977

Re: Filing of enclosed documents.

Case #: 07-31-GMS



March 19, 2008

Dear Clerk,

Enclosed, please find the EX. A to be attached to the recently filed Motion for Compulsory Physical and Mental evaluations along with the Memo. of Law.

Thank you, and have a Happy Easter if you celebrate.

Let Judge Sleet know I have just filed 2 more State calls and another grievance in concern for my health and safety.

Respectfully,
William Joseph Webb Jr.

CERTIFICATE OF SERVICE

I, William Joseph Webb Jr., hereby certify that I have served a true and correct copy(ies) of the attached: _____

Affidavit and Memorandum of Law upon the following parties/person(s):

TO: Catherine Damsgaard, Esq.
820 N. French Street
Wilmington, DE 19801

TO: _____

TO: R.M. Ernst, E.M. Ford, M.T. Montezinos,
Esqs.
913 Market Street
Suite 800
Wilmington, DE 19801

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977,

On this 19th day of March, 2008.

William Joseph Webb Jr.